

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBY E. SPIVEY and DEPARTMENT OF THE ARMY,
ALABAMA NATIONAL GUARD, Montgomery, AL

*Docket No. 03-587; Submitted on the Record;
Issued May 2, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has a ratable hearing loss causally related to his federal employment.

In a decision dated December 30, 2002, the Office of Workers' Compensation Programs advised appellant that, while his claim had been accepted for a hearing loss due to employment-related noise exposure, the hearing loss was not severe enough to be considered ratable. Consequently, appellant was not entitled to a schedule award. This determination was based upon the August 21, 2002 calculation of the Office's medical adviser, which in turn, was made on the basis of a July 25, 2002 audiological evaluation and report submitted by Dr. Robert J. Sciacca, a Board-certified otolaryngologist.

The Board finds that appellant does not have a ratable hearing loss causally related to his federal employment.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.²

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). On January 29, 2001 the Office announced that, effective February 1, 2001, schedule awards would be determined in accordance with the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (January 29, 2001). This action was in accordance with the authority granted the Office under 20 C.F.R. § 10.404.

Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.³ Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁴ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁵ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁶ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁷

In reviewing appellant’s most recent July 25, 2002 audiogram, the frequency levels recorded at 500, 1,000, 2,000 and 3,000 cycles per second for the right ear revealed decibel losses of 25, 35, 20 and 15, respectively, for a total of 95 decibels. This figure when divided by 4 results in an average hearing loss of 23.75 decibels. The average loss of 23.75 is reduced by 25 decibels to equal –1.25, which results in a 0 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 30, 35, 20 and 15 respectively, for a total of 100 decibels. Utilizing the above-noted formula results in a zero percent monaural hearing loss for the left ear. Accordingly, pursuant to the Office’s standardized procedures, the Office’s medical adviser determined that appellant had a nonratable hearing loss in both ears.

The Board finds that the Office medical adviser applied the proper standards to the findings as stated in Dr. Sciacca’s report and the accompanying July 25, 2002 audiogram performed on his behalf. This resulted in a calculation of a nonratable hearing loss as set forth above. Consequently, the Office properly determined that appellant was not entitled to a schedule award.

³ A.M.A., *Guides* at 250 (5th ed. 2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

The December 30, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 2, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member